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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 524.

CHARLES LOUIS d'ESPINAY-DURTAL,
Petitioner,

against

JOHN WAKEFIELD HARRIS and ELIZABETH MARSHALL HARRIS, Infants, by IRVING DROUGHT HARRIS, their Guardian *ad litem;* GUARANTY TRUST COMPANY of NEW YORK, as Trustee; ANTHONY J. ROMAGNA, Guardian *ad litem* of CHANTAL LOUISE MARIE FRANÇOISE d'ESPINAY, Infant; THOMAS W. CORLEY; HERVE NEAU; JESUS ARRUTIA; ANNA ARRUTIA; MARGUERITE ARRIETA; THERESE ARRIETA; A. J. HITCHMAN-ILES, as Executor of the Last Will and Testament of HENRIETTA FERRIS; THOMAS BYRON GILCHRIST, as Ancillary Executor of the Last Will and Testament of JEAN FERRIS d'ESPINAY-DURTAL; ROBERT M. COWEN, as Ancillary Executor of JOSEPHINE GROVE,
Respondents.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

The Federal question passed upon by the Court of Appeals of the State of New York is "whether the retroactive commutation of appellant Charles Louis d'Espinay-Durtal's annuity as of the date of his wife's death violated his rights under the Fourteenth Amendment."[1]

The briefs of both petitioner and respondent make it crystal clear that this question is a substantial and novel one which has not been passed upon by this Court.

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[1] Petition for Certiorari, p. 3

Petitioner has presented two separate arguments for his claim that he has been deprived of property without due process of law:

1. The courts of New York do not have the power to commute petitioner's annuity since the controlling statute as it existed in 1941 (the date upon which petitioner's rights to the said annuity became vested) permitted commutation only upon the consent of the party entitled to the annuity;

2. Assuming arguendo the power of the courts of New York to commute petitioner's annuity, commutation cannot be retroactive.

Respondents have cited cases upholding the power of New York courts to commute annuities in appropriate cases (none similar to the case at bar) in support of the proposition that the courts may order retroactive commutation (pp. 6 and 9, Respondents' brief). However, not a single authority permitting retroactive commutation has been cited in respondents' brief, because there are none.*

Ithaca Trust Co. v. United States, 279 U. S. 151 is the only case cited by respondents (their brief p. 9) to substantiate the legality of retroactive commutation. The case is wholly inapposite. It deals solely with the method for valuing an annuity for Federal estate tax purposes and does not deal even remotely with the power of the court to direct commutation either presently or retroactively. Thus the argument set forth at pp. 11 to 14 in the petition for certiorari, to the effect that retroactive commutation will deprive petitioner of his constitutional rights without due process of law, remains unanswered by respondents.

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* Footnotes 11, 12 and 13, p. 14 Petition for Certiorari.

For the reasons set forth in the petition for a writ of certiorari and in this reply brief, the writ should be granted.

Respectfully submitted,

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